

**INNOVATION|PARTNERS**

540 University Avenue, Suite 300  
PALO ALTO, CALIFORNIA 94301  
TELEPHONE: (650) 328-0100  
FACSIMILE: (650) 328-0199  
www.i-plaw.com

August 27, 2004

**RECEIVED**  
**AUG 30 2004**  
Technology Center 2100

**Re: Extension Fees charged for 09/578,672**

- The **Final Office Action mail date** for the above referenced application is **December 11<sup>th</sup>, 2003.**

- A reply to this Final Office Action was sent to the USPTO *within two months*, mailed on **February 11<sup>th</sup>, 2004.**

This date can be verified by referring to the Certificate of Mailing on the cover sheet of the Office Action Response enclosed.

The fact that this Office Action Response was received by the USPTO can be verified by the stamping and returning of the postcard submitted along with the Response. A copy of this postcard, stamped as received on **February 17<sup>th</sup>, 2004**, can be found enclosed.

**Was an extension fee required with the Notice of Appeal filed?**

M.P.E.P Sec. 7-10.02(e) states that the period for response by which the extension fee is calculated is determined by the date on which the Office mails the Advisory Action or by the date on which the six month reply period ends, whichever comes first.

The six month reply period ending date for this application was **June 11<sup>th</sup>, 2004.**

The Advisory Action was received by this office via fax on **July 13<sup>th</sup>, 2004.**

Therefore, the date on which the extension fee would be calculated is **June 11<sup>th</sup>, 2004.**

A Notice of Appeal was filed by this office on **May 18<sup>th</sup>, 2004.**

Because the period of reply for computing the extension fee had not started until June 11<sup>th</sup>, 2004, the Notice of Appeal was filed timely and did not require an extension fee.

**Was an extension fee required with the Request for Continued Examination filed?**

M.P.E.P. 1206 requires an Appeal Brief to be filed within 2 months of the Notice of Appeal. It also states that if an Appeal Brief is not filed, an application is not abandoned until the date on which the brief was due.

Therefore, the application in question was pending and no extension of time was due until July 18<sup>th</sup>, 2004.

The Request for Continued Examination was filed on July 15<sup>th</sup>, 2004.

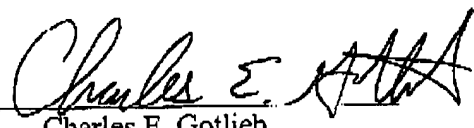
Therefore, the RCE was filed in a timely fashion, while the application was pending, and no extension of time was due.

**CONCLUSION**

Two extension of time penalties were charged against the deposit account on this application when in fact none were due. Both the Notice of Allowance and the Request for Continued Examination were filed in a timely fashion, as proven above.

Please refund both extension fees, one costing \$420.00 and the other costing \$1,480.00, for a total of \$1,900 to Deposit Account Number 071738.

Signature: \_\_\_\_\_

  
Charles E. Gotlieb